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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 JAMES H. MAXWELL, JR.,

12 Plaintiff,

13 v.

14 KING COUNTY JAIL, *et al.*,

15 Defendants.

16 CASE NO. 2:22-cv-00580-MJP-JRC

17 ORDER TO SHOW CAUSE

18 This matter is before the Court on referral from the District Court and on plaintiff's
19 motion for leave to proceed *in forma pauperis* ("IFP"). Dkt. 1.

20 Plaintiff is incarcerated and his proposed complaint is subject to screening by the Court
21 pursuant to 28 U.S.C. §§ 1915(e) and 1915A, which require dismissal of a complaint that is
22 frivolous, malicious, or fails to state a claim upon which relief can be granted. Plaintiff's
23 proposed complaint fails to state a claim upon which relief can be granted. However, the Court
24 will grant plaintiff an opportunity to amend his proposed complaint to correct the deficiencies set
forth herein.

If plaintiff chooses to amend his proposed complaint, he must file his amended proposed complaint on the Court's form, on or before June 10, 2022. Failure to do so or to comply with this Order will result in the undersigned recommending dismissal of this matter without prejudice. Finally, because it does not appear that plaintiff has presented this Court with a viable claim for relief, the Court declines to rule on his IFP motion at this time. Instead, the Clerk shall renote the IFP motion for the Court's consideration on June 10, 2022.

BACKGROUND

Plaintiff, who is incarcerated at King County Jail, initiated this matter on April 28, 2022, by filing a motion to proceed IFP and a proposed complaint. *See Dkt. 1.* Plaintiff brings suit against King County Jail and the City of Seattle because they allegedly violated his right to a religious diet. *See Dkt. 1-1 at 3.* Plaintiff seeks release or \$500 for every day defendants deny him a vegetarian diet. *See id. at 9.*

DISCUSSION

I. Legal Standard

Pursuant to 28 U.S.C. § 1915A(a), the Court must dismiss a complaint, or any portion of a complaint, if it: “(1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant who is immune from such relief.”

To state a claim upon which relief may be granted, a complaint must contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Although “detailed factual allegations” are not necessary, “[f]actual allegations must be enough to raise a right to relief above the speculative level[.]” *Twombly*, 550 U.S. at 555. When a plaintiff is proceeding *pro se*, this Court must “construe the pleadings liberally and . . . afford the [plaintiff] the benefit of any doubt.”

1 | *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010) (internal citation omitted). The claims will be
 2 | dismissed only where it ““appears beyond doubt that the plaintiff can prove no set of facts in
 3 | support of his claim which would entitle him to relief.”” *Wilhelm v. Rotman*, 680 F.3d 1113,
 4 | 1121 (9th Cir. 2012) (internal citation omitted).

5 **II. Religious Diet Claims**

6 | Plaintiff does not state which amendment or federal statute defendants allegedly violated.
 7 | However, liberally construing his complaint, it appears that plaintiff may be seeking to bring
 8 | claims for violation of the Religious Land Use for Institutionalized Persons Act (“RLUIPA”)
 9 | and/or the First Amendment Free Exercise Clause. *See* Dkt. 1-1 at 4–6.

10 **A. RLUIPA Claim**

11 | Under RLUIPA, “[n]o government shall impose a substantial burden on the religious
 12 | exercise of a person residing in or confined to an institution, . . . even if the burden results from a
 13 | rule of general applicability” unless the government can establish that the imposition of the
 14 | burden “is in furtherance of a compelling governmental interest” and furthers that interest by use
 15 | of the “least restrictive means.” 42 U.S.C. § 2000cc–1(a)(1) & (2); *Cutter v. Wilkinson*, 544 U.S.
 16 | 709, 720 (2005). Although RLUIPA does not define “substantial burden,” the Ninth Circuit has
 17 | found it must be “oppressive to a significantly great extent, such that it renders religious exercise
 18 | effectively impracticable,” *San Jose Christian Coll. v. City of Morgan Hill*, 360 F. 3d 1024,
 19 | 1034–35 (9th Cir. 2004), or “puts significant pressure on inmates . . . to abandon their religious
 20 | beliefs.” *Warsoldier v. Woodford*, 418 F.3d 989, 996 (9th Cir. 2005).

21 | Here, plaintiff’s proposed complaint fails to state a claim under RLUIPA. Plaintiff alleges
 22 | that he filed a request for a vegetarian diet because “there is only vegetarian belie[f] to [his]
 23 | religion.” Dkt. 1-1 at 5. However, he has not alleged any facts beyond a speculative level that his
 24 |

1 request for a vegetarian diet was denied by defendants. For example, he alleges that “chicken
 2 bologna is not vegetarian”—but he does not allege that defendants ever gave him chicken
 3 bologna. Dkt. 1-1 at 4. He alleges that defendants claim his food is vegetarian, but that he “[does
 4 not] think so” because “chicken flavor is not vegetarian” and “beef or chicken sol” is not
 5 vegetarian. *Id.* at 5. It is unclear what plaintiff means by “beef or chicken sol,” but it appears that
 6 plaintiff is alleging that his food is not vegetarian because it is meat flavored. However, it is not
 7 clear how the flavor of the food puts a substantial burden on his religious beliefs. Further, his
 8 claim seems to be based on his speculation that the food is not vegetarian, which is insufficient to
 9 state a claim. *See Twombly*, 550 U.S. at 555.

10 **B. First Amendment Free Exercise Claim**

11 Under 42 U.S.C. § 1983, a plaintiff must allege facts showing (1) the conduct about
 12 which he complains was committed by a person acting under the color of state law; and (2) the
 13 conduct deprived him of a federal constitutional or statutory right. *Wood v. Ostrander*, 879 F.2d
 14 583, 587 (9th Cir. 1989). While municipalities and local government units are considered
 15 persons for § 1983 purposes, they are only liable for policies, regulations, and customs adopted
 16 and promulgated by that body’s officers. *Monell v. Department of Social Services of City of New*
 17 *York*, 436 U.S. 658, 690 (1978). To recover, plaintiff must show that county employees or agents
 18 acted through an official custom or policy that permits violation of plaintiff’s civil rights, or that
 19 the entity ratified the unlawful conduct. *See Monell*, 436 U.S. at 690–91.

20 As with RLUIPA, under the First Amendment, “[a] person asserting a free exercise claim
 21 must show that the government action in question substantially burdens the person’s practice of
 22 [his] religion.” *Jones v. Williams*, 791 F.3d 1023, 1031 (9th Cir. 2015). Plaintiff’s complaint fails
 23 to state a claim under the First Amendment for the same reasons his RLUIPA claim fails.

1 Notably, plaintiff has not alleged enough facts to establish how the practice of his religion has
2 been substantially burdened. His claim also fails because he has not alleged what each of the
3 named defendants did to violate his rights. Specifically, he has not alleged that a custom or
4 policy was the motivating factor behind the alleged violation, which is required to hold
5 municipalities and local governments liable in § 1983 claims. *See Monell*, 436 U.S. at 690–91.
6 Finally, plaintiff seeks release as a form of relief, which is not appropriate in this type of action.

7 **CONCLUSION**

8 Due to the deficiencies described above, unless plaintiff shows cause or amends the
9 proposed complaint, the Court will recommend dismissal of the proposed complaint without
10 prejudice. If plaintiff chooses to amend his proposed complaint, he must file his amended
11 proposed complaint on or before **June 10, 2022**. Failure to do so or to comply with this Order
12 will result in the undersigned recommending dismissal of this matter without prejudice.

13 The amended complaint must be legibly rewritten or retyped in its entirety, it should be
14 an original and not a copy, it should contain the same case number, and it may not incorporate
15 any part of the original complaint by reference. The amended complaint will act as a complete
16 substitute for the original complaint, and not as a supplement.

17 An amended complaint supersedes all previous complaints. *Forsyth v. Humana, Inc.*, 114
18 F.3d 1467, 1474 (9th Cir. 1997) *overruled in part on other grounds*, *Lacey v. Maricopa County*,
19 693 F.3d 896 (9th Cir. 2012). Therefore, the amended complaint must be complete in itself, and
20 all facts and causes of action alleged in the original complaint that are not alleged in the amended
21 complaint are waived. *Forsyth*, 114 F.3d at 1474.

22 The Clerk is directed to send plaintiff the appropriate forms so that he may file an
23 amended complaint. The Clerk is further directed to send copies of this Order to plaintiff.

1 If plaintiff fails to file an amended complaint or fails to adequately address the issues raised
2 herein on or before **June 10, 2022**, the undersigned will recommend dismissal of this action
3 pursuant to 28 U.S.C. § 1915.

4 Dated this 11th day of May, 2022.

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7 J. Richard Creatura
8 Chief United States Magistrate Judge
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